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Your Ref: JT:AMS:P53078

Examiner's first report on patent application no. 2003279091  
by Paul Giampavolo

Last proposed amendment no.

Dear Madam/Sir,

I am replying to the request for examination. I have based this report on the pamphlet. I have examined the application and I believe that there are lawful grounds of objection to the application. These grounds of objection are:

1. There is no Notice of Entitlement on file. You will need to file one because an application without a Notice of Entitlement cannot be accepted.
2. The specification does not comply with Section 40(4) because the claims do not relate to one invention only. I have found different inventions based on the following features that distinguish the claims from each other:
  - Claims 1-11 and 27-34 are directed to a guard in which each guard section has a wedge shape in cross section. It is considered that this comprises a first distinguishing feature.
  - Claims 12-26 are directed to a guard wherein at least one of the guard sections has an outwardly facing area for receipt of a signage member. It is considered that this comprises a second distinguishing feature.
  - Claim 35 is directed to a guard in which the guard section has an attachment member for attaching to a merchandise rack. It is considered that this comprises a third distinguishing feature.

Unity of invention is only fulfilled when there is at least one "special technical feature" present in the claims. This is a feature that both:

- provides a technical relationship among all the claims; and,
- makes a contribution over the prior art.

In the above groups of claims, the identified distinguishing features may have the potential to make a contribution over the prior art but are not common to all the claims and therefore cannot provide the required technical relationship and any common features that are present are considered to be known in the art. Therefore there is no special technical feature present in the claims and the requirements for unity of invention are consequently not satisfied *a priori*.

3. I have limited the search and report to the invention defined by claims 1-11 and 27-34. When I receive a response to my objections I may extend the search area and expand the report on the basis of my findings.
4. The invention defined in claims 1 and 27 is not novel (and does not involve an inventive step) when compared with many barriers/guards/kerbs used on highways and roads. For example see the following:

D1) US 5123773 (Yodock)  
D2) US 6086285 (Christensen)  
D3) US 5605413 (Brown)  
D4) US 4762438 (Dewing)

It is noted that each of these claims is directed to a guard for protecting the sides of a pallet or a merchandise grouping and is therefore not limited to such a use only. Each of the above citations is capable of protecting a pallet or a merchandise grouping.

5. The invention defined in claims 1 and 27 is also not novel (and does not involve an inventive step) over the following document

D5) CA 2375246 cited in the examination report of US 10/676412

It is noted that these claims do not define that the cross section is a side cross section or that it is the bottom which is wider than the top. Fig 6 clearly shows that the section has a wedge shape cross section when looking from the top.

6. In the alternative the invention defined in claims 1 and 27 does not involve an inventive step over citation D5.

The claimed invention differs from D5 in that it has a wedge shape cross section to increase the stability of the guard section. However it is considered common general knowledge in the art to make barricades and guards with a wider base for the purpose of increasing stability – for example see citations D1- D4 and also (D6) US 5913501 cited in the US examination report. It would be obvious for a skilled addressee to combine this common general knowledge with the teachings of D5 and thereby arrive at the claimed invention.

7. Furthermore appended claims 2-11 and 28-34 add only features that are either disclosed in D5 or are common general knowledge in the art and which therefore cannot contribute to providing a patentable inventive step.

NOTE: There is a current postponement of acceptance in place. If you overcome all other objections before the expiration of that postponement, the Commissioner will only accept the application at that time if you have filed a clear and unambiguous statement requesting the withdrawal of that postponement. Otherwise, a further adverse report will be issued.

I apologise for any inconvenience resulting from your application not being considered within the time limit set out in our Customer Service Charter.

You have 21 months from the date of this report to overcome all my objection(s) otherwise your application will lapse.

You will need to pay a monthly fee for any response you file after 12 months from the date of the first report.

You will also need to pay any annual continuation fees that apply. These will normally be first due five years from the filing date. Please note however that earlier commencement dates apply for divisional applications.

Information about fees may be obtained by phoning 1300 651 010.

Yours faithfully,



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